

# In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 02-208V

October 30, 2008

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DOROTHY VERDON, Parent of  
ROBERT VERDON,

Petitioner,

v.

SECRETARY OF THE DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,

Respondent.

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Motion to dismiss  
premature

## ORDER<sup>1</sup>

On March 18, 2002, petitioner filed a petition under the National Childhood Vaccine Injury Act, 42 U.S.C. §300aa-10 et seq., on behalf of her son Robert Verdon (hereinafter, “Robert”), alleging that vaccines caused his developmental delay and autism. Pet. ¶ 5.

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<sup>1</sup> Because this order contains a reasoned explanation for the special master's action in this case, the special master intends to post this order on the United States Court of Federal Claims's website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). Vaccine Rule 18(b) states that all decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would constitute a clearly unwarranted invasion of privacy. When an order expressing a reasoned explanation is filed, petitioner has 14 days to identify and move to delete such information prior to the document's disclosure. If the special master, upon review, agrees that the identified material fits within the banned categories listed above, the special master shall delete such material from public access.

On June 2, 2008, respondent moved to dismiss this case based on the petition's being filed beyond the 36-month statute of limitations. 42 U.S.C. §300aa-16(a)(2). Respondent states that Robert was diagnosed with pervasive developmental delay (PDD) on April 3, 2001. It is unclear if he was ever diagnosed with autism. Motion at p. 3 and n.3. However, Robert had motor delay noted on July 16, 1998. There is further documentation that his motor delay onset was not July 1998, but October 1998. *Id.* In addition, Robert was noted to have language difficulties by February 22, 1999. *Id.*

On June 25, 2008, petitioner filed her objection to respondent's Motion to Dismiss. Citing the objective standard the Federal Circuit posited in Markovich v. Sec'y of HHS, 477 F.3d 1353 (Fed. Cir. 2007), petitioner details ambiguities from the medical records in which various reasons are given for Robert's symptoms, i.e., motor delay in October 1998 due to social deprivation rather than a neurologic reason; fussy behavior due to possible teething and no good explanation for his motor and language delays in 1999. Objection at pp. 2 and 3. Petitioner states Robert was improving at the time these records were made. Objection at p. 3.

It would be premature to dismiss this case without a complete filing of the medical records (respondent describes them as "minimal records filed to date" at p. 3 of the Motion to Dismiss) and an evidentiary evaluation of when Robert's PDD began as well as whether he has autism. Respondent's motion is hereby DENIED.

**IT IS SO ORDERED.**

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DATE

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Laura D. Millman  
Special Master